



MEMORANDUM

To: Initial System Customers
From: Harvey Gershman
Re: Capacity Adjustments in Customer Service Agreements

Date: March 17, 2006

At our recent customer meeting, several questions arose about the terms of your Service Agreements regarding the potential modification of your Contract Capacities. Once the new metering program has been completed and all the meters certified, we will be able to monitor actual capacities used by each building, and so you will be able to determine more accurately your capacity needs and take appropriate action in that respect.

Section 2.4 of your Service Agreements allows you to lower your contract capacities in two ways (see Attachment A for text of this section):

1. According to Section 2.4(b), if you have made energy conservation investments in your building, you can request a reduction in your Contract Capacity. In such case, an Independent Engineer, hired at your cost, must provide an analysis of the impact of the conservation investment on reducing your capacity requirement. Then, taking into account that analysis and any relevant metering data, Metro will make a reasonable determination of the Contract Capacity reduction, and the resulting capacity will then become your new Contract Capacity.
2. According to Section 2.4(c), if you determine that your Contract Capacity exceeds your needs, you have the right to reduce your Contract Capacity by requesting such a reduction from Metro. In that event, you and Metro will negotiate in good faith a reasonable reduction in your Contract Capacity. Metro will not, however, entertain such requests for capacity reductions without sufficient metering data reinforcing your request.

Both methods of Contract Capacity reduction assume that the DES will continue to be the exclusive provider of your total heating and/or cooling requirements.

When considering whether or not to request any reduction in your Contract Capacities, please remember that Section 2.4(a) of the Services Agreement also provides a method of *increasing* your Contract Capacity at any time should it exceed your actual requirements. Your actual requirements will be measured by averaging the top two 30-minute periods of use during the year. In that case, the higher amount (the Actual Capacity Requirement) will be used as your Contract Capacity for the ensuing 12 months – a ratchet effect. After the 12-month period, your Contract Capacity will revert to the amount in your contract, unless you regularly continue to exceed it, in which case Metro has the option of making the higher amount your new Contract Capacity.

These provisions should lead you to careful consideration of your capacity needs once a sufficient data base of your usages has been built up from the readings of your new meters. At that time, Metro will be pleased to consider reasonable adjustments to your Contract Capacities.

If you have any questions, please contact me at 301-807-2688.



Attachment A

Section 2.4 Contract Capacity Changes. (a) Except in the case of any non-recurring special occasion or short term accident involving the Premises (including operating errors or the breakdown of any equipment or mechanical, electrical or other system located therein), if, during any Contract Year, the Customer's Actual Capacity Requirement exceeds the Contract Capacity then in effect for the Services, then, unless the Supplier notifies the Customer that it is unable or unwilling to provide increased levels of Services to satisfy the Customer's Actual Capacity Requirement, the Contract Capacity shall be adjusted for the next twelve (12) months to an amount equal to Customer's Actual Capacity Requirement. At the expiration of such twelve (12) month period, Customer's Contract Capacity shall revert to the Contract Capacity in effect immediately prior to the application of this Section 2.4, subject to continuing adjustment as otherwise provided in this Article II. If the Supplier's records show that the Customer's Actual Capacity Requirement continues to exceed the Contract Capacity then in effect, the Supplier shall, at its option, adjust the Customer's Contract Capacity under this Agreement to reflect the Customer's Actual Capacity Requirement.

(b) If, during any Contract Year, the Customer materially reduces its actual capacity requirement as a result of an investment in energy efficiency, such as additional insulation, the Supplier shall adjust the Contract Capacity. In such instances, the Customer shall provide to the Supplier a written request specifying the investment in energy efficiency, the resulting New Contract Capacity suggested, and an analysis of the amount of the reduction in Tons and/or Mlbs. per hour prepared by an Independent Engineer. Such analysis of the amount prepared by an Independent Engineer shall be at the Customer's cost. The determination of the amount of the reduction shall be at the reasonable discretion of the Supplier, and shall take into account the Customer's request, the analysis prepared by the Independent Engineer, and any metered data available before and after the improvement. The Supplier shall provide to the Customer a written response to the request, and such response shall not be unreasonably withheld or delayed. Such reduced Services shall be on the same terms and conditions as are set forth in this Agreement, and all references to Contract Capacity will mean the New Contract Capacity.

(c) In addition to the provisions set forth in subsection (b) of this Section 2.4, in the event the Customer determines that the Contract Capacity it has nominated for Services exceeds its needs (but subject to the requirement that Supplier be the sole and exclusive source of Customer's heating and cooling needs up to the Contract Capacity) the Customer shall have the right upon its written request to the Supplier to make an adjustment at any time during the Term of this Contract to reduce its Contract Capacity. In such event, the Customer and the Supplier agree to negotiate in good faith a reasonable reduction in the Customer's Contract Capacity that shall reflect the Customer's actual capacity requirements for the Services. Such reduced Services shall be on the same terms and conditions as are set forth in this Agreement, and all references to Contract Capacity will mean the New Contract Capacity.